

JOSEPH GROSS
(Appellant)

v.

AMES DRYWALL CONSTRUCTION
(Appellee)

AND

MAINE EMPLOYERS' MUTUAL INSURANCE CO.
(Insurer)

Decided: August 16, 2013
Conferenced: May 21, 2013

PANEL MEMBERS: Hearing Officers Greene, Jerome, and Knopf
BY: Hearing Officer Knopf

[¶1] Joseph Gross appeals from a decision of a Workers' Compensation Board hearing officer (*Stovall, HO*) denying his Petition for Award on the ground that Mr. Gross was an independent contractor pursuant to 39-A M.R.S.A. § 102(13) (Supp. 2012),¹ and not an employee, and therefore not governed by the Workers' Compensation Act. Mr. Gross admitted that he had obtained a predetermination from the Board that he is a construction subcontractor pursuant to 39-A M.R.S.A. § 105(1-A) (Supp. 2012). This predetermination established a rebuttable presumption that Mr. Gross “perform[ed] construction work in

¹ Title 39-A M.R.S.A. § 102(13) (Supp. 2012) has since been amended, *see* P.L. 2011, ch. 678, §§ 9, 10 (effective Dec. 31, 2012, codified at 39-A M.R.S.A. § 102(13-A) (Supp. 2012)).

a manner that would not make [him] an employee . . . in any later claim for benefits under this Act.” *Id.* § 105(1-A) (A). Mr. Gross’s predetermination was valid for one year, from October 25, 2010, until October 24, 2011, and thus, the presumption was in effect with respect to his June 30, 2011, date of injury. *See id.*

[¶2] Title 39-A M.R.S.A. § 105-A (Supp. 2012),² governing construction subcontractor status, was also in effect at the time of the June 30, 2011, date of injury. That provision contains a second presumption that “a person performing construction work on a construction site” is an employee, “unless . . . [t]he person is a construction subcontractor.” *Id.* § 105-A(2)(A).

[¶3] Mr. Gross contends that the hearing officer erred by determining that he was an independent contractor pursuant to section 102(13), and by failing to consider whether he was a construction subcontractor or employee in light of the applicable presumptions.

[¶4] We agree with Mr. Gross’s contention that the statutory presumptions should have been applied. Accordingly, we vacate the hearing officer’s decision and remand for additional proceedings, as necessary, in which the presumptions are applied.

² Title 39-A M.R.S.A. § 105-A (Supp. 2012) has since been amended, *see* P.L. 2011, ch. 643, § 9 (effective Dec. 31, 2012, codified at 39-A M.R.S.A. § 105-A(1)(B) (Supp. 2012)).

The entry is:

The hearing officer's decision is vacated, and the case remanded for proceedings consistent with this decision.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2012).

Attorney for Appellant:
Bryan M. Chabot, Esq.
SCACCIA, BARTLETT & CHABOT
1038 Main Street
P.O. Box 929
Sanford, ME 04073

Attorney for Appellee:
Elizabeth Eddy Griffin, Esq.
MEMIC
261 Commercial Street
P.O. Box 3606
Portland, ME 04104